

**1. PARTIES**

THIS CONTRACT (#08-073-AFSD) is entered into by and between the State of Montana, Department of Corrections, (hereinafter referred to as "the State"), whose address and phone number are 1539 11<sup>th</sup> Avenue, Helena MT 59620, (406)444-3930 and **Cashless Systems, Inc.**, (hereinafter referred to as the "Contractor"), whose address, federal ID number, and phone number are 1041 Davis Drive, Apex NC 27523, (insert ID number) and (919) 481-1616.

**THE PARTIES AGREE AS FOLLOWS:**

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

This contract shall take effect upon receipt of final contract signature and shall terminate after full acceptance and one year warranty period, unless terminated earlier in accordance with the terms of this contract (Section 18-4-313, MCA).

**3. SERVICES AND/OR EQUIPMENT**

Contractor agrees to provide to the State the Inmate Banking and Commissary Systems described within RFP08-1279B and accepted through Contractor's response.

**4. CONSIDERATION/PAYMENT**

**4.1 Payment Schedule.** In consideration for the Inmate Banking and Commissary software to be provided, Department shall pay according to the Milestone payment schedule listed below. Payments to the Contractor will be based on completion and acceptance of each milestone defined below:

<b>Milestone/Deliverable</b>	<b>Amount</b>	<b>Payment % of Total</b>
Milestone 1: Initial start-up	\$69,500.00	25%
Milestone 2: Completion of Phase I	\$69,500.00	25%
Milestone 3: Completion of Phase II	\$97,300.00	35%
Milestone 4: Completion of Phase III and final acceptance	\$41,800.00	15%
		%
Total Contract	\$278,100.00	100%

**4.2 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

## **5. ACCESS AND RETENTION OF RECORDS**

**5.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agent's access to any records necessary to determine contract compliance. (Section 18-1-118, MCA)

**5.2 Retention Period.** The Contractor agrees to create and retain records supporting the product and services provided for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

## **6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

## **7. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

## **8. LIMITATION OF LIABILITY**

Except for damages caused by injury to persons or tangible property, or related to defending intellectual property provided under the contract, the Contractor's liability for contract damages is limited to twice the contract total.

## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** The Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products, and completed operations; premises owned, leased, occupied, or used.

**9.4 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.5 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance to sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

## **11. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **12. TITLE AND OWNERSHIP RIGHTS**

The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "content"), but grants Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

## **13. PATENT AND COPYRIGHT PROTECTION**

**13.1 Third-Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**13.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the contract has been breached.

#### **14. CONTRACT OVERSIGHT**

**14.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**14.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

**14.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and the contract shall be amended in writing accordingly.

#### **15. CONTRACT TERMINATION**

**15.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 16, Event of Breach – Remedies.

**15.2 Bankruptcy or Receivership.** Voluntary or involuntary Bankruptcy or receivership by Contractor may be cause for termination.

**15.3 Noncompliance with Department of Administration Requirements.** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

**15.4 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See section 18-4-313(4), MCA)

**15.5 Termination for Convenience.** The State may terminate this contract and/or any active projects in whole or in part at any time. In the event the contract is terminated for the convenience of the State the agency will pay for all accepted work performed and accepted deliverables completed in conformance with the contract up to the date of termination.

## **16. EVENT OF BREACH – REMEDIES**

**16.1 Event of Breach.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of the contract; or
- b. failure to submit any report required by this contract; or
- c. failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

**16.2 State's Actions in Event of Breach.** Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- a. give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- b. give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- c. set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any event of breach; or
- d. treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

## **17. WAIVER OF BREACH**

No failure by the State to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other breach on the part of the Contractor.

## **18. STATE PERSONNEL**

**18.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Gary Willems  
Department of Corrections  
Contracts Management Bureau

1539 11<sup>th</sup> Avenue  
Helena, MT 59620-0131  
(Telephone) (406) 444-4941  
(Fax #): (406) 444-9818  
(E-mail): gwillems@mt.gov

**18.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Kim Timm  
Department of Corrections  
1539 11<sup>th</sup> Avenue  
Helena, MT 59620  
(Telephone #): (406) 444-4903  
(Fax #): (406) 444-9818  
(E-mail): ktimm@mt.gov

**19. CONTRACTOR PERSONNEL**

**19.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**19.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Marshall Boon  
1041 Davis Drive  
Apex, NC 27523  
(Telephone #): (919) 481-1616  
(Fax #): (704) 908-9976  
(E-mail): MarshallBoon@CashlessSystems.com

**19.3 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

**Same as above.**

## **20. MEETINGS AND REPORTS**

**20.1 Technical or Contractual Problems.** The Contractor is required to meet with the State's personnel, or designated representatives, at no additional cost to the State, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

**20.2 Progress Meetings.** During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 Failure to Notify.** In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including, without limitation, damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend, or modify Contractor's or the State's rights or obligations pursuant to any provision of this contract.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **21. CONTRACTOR PERFORMANCE ASSESSMENTS**

**21.1 Assessments.** The State may do assessments of the Contractor's performance. Contractors will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**21.2 Record.** Completed assessments may be kept on record at ITSD and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **22. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by

the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

**23. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

**24. SCOPE, AMENDMENT, AND INTERPRETATION**

**24.1 Contract.** This contract consists of nine (9) numbered pages, any Attachments as required, the Contractor's response to RFP #08-1279B, as amended, and RFP #08-1279B, as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

CONTRACTOR shall notify DEPARTMENT [in writing] of any apparent conflict between the referenced documents. All apparent conflicts shall be resolved by the parties according to the considerations set forth herein.

**24.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.



25. **EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**Department of Corrections**  
**1539 11<sup>th</sup> Avenue**  
**Helena, MT 59620**

**Cashless Systems, Inc.**  
**1041 Davis Drive**  
**Apex, NC 27523**  
**FEDERAL ID #**

BY: Rhonda Schaffer Administrator  
(Name/Title)

BY: Marshall Boon  
Marshall Boon, President

Rhonda Schaffer  
(Signature)

Marshall Boon  
(Signature)

DATE: 6/25/08

DATE: 6/26/08

Approved as to Legal Content:

\_\_\_\_\_  
Department of Corrections, Legal Counsel (Date)

Approved as to Form:

Brad Sch 6/25/08  
Procurement Officer (Date)  
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

RB Clark 6-25-08  
Chief Information Officer (Date)  
Department of Administration